1979

Mountain States Legal Foundation v. Utah Public Service Commission et al : Brief of Amicus Curiae

Utah Supreme Court

IN THE SUPREME COURT

OF THE STATE OF UTAH

* * * * * * *

FILED

SEP 17 1979

Clerk, Supreme Court, Utah

MOUNTAIN STATES LEGAL FOUNDATION, Petitioner, v. UTAH PUBLIC SERVICE COMMISSION, Milly O. Bernard, Chairman, Olof E. Zundel, and Kenneth Rigtrup, as Commissioners thereof, Respondents.	)	No. 16162

* * * * * * *

Insertion to page 34 line 36 of the brief of Amici Curiae, Kennecott Copper Corporation, Ideal Basic Industries, Stauffer Chemical Co., and Union Carbide Corporation:

In fact the same legislature which amended Utah Code Ann. §54-3-1, which The Public Service Commission would use as a basis for assuming welfare functions, has specifically stated that efforts to minimize social problems arising from energy costs "is the responsibility of the department of social services and not of energy pricing policies." This statement appears in a joint resolution passed by the 42nd Legislature of the State of Utah on March 10, 1977 and is known as S.C.R. No. 1. A copy of this joint resolution is attached hereto and marked as Appendix IX. The Court's attention is directed to paragraph 26 thereof.

RESOLUTIONS PASSED

S. C. R. No. 1 (Passed March 10, 1977)

ENERGY POLICY ADOPTION

A CONCURRENT RESOLUTION OF THE GENERAL SESSION OF THE 42ND LEGISLATURE OF THE STATE OF UTAH, THE GOVERNOR CONCURRING THEREIN; ADOPTING AS THE ENERGY POLICY FOR THE STATE OF UTAH THE COMPREHENSIVE ENERGY POLICY SUBMITTED TO THE LEGISLATURE AND THE GOVERNOR BY THE JOINT LEGISLATIVE COMMITTEE ON ENERGY POLICY IN THEIR ENERGY POLICY REPORT; AND COMMENDING THIS COMMITTEE AND ITS MEMBERS FOR THEIR EFFORTS IN PREPARING THIS REPORT.

Be it resolved by the Legislature of the State of Utah, the Governor concurring therein:

WHEREAS, one of the more far-reaching, world-wide developments over the last several years has been that of an increasing shortage of sources of energy that can be utilized in an economic and environmentally protective manner;

WHEREAS, this shortage has been made more acute by the marked increase in the prices of various sources of energy, particularly the fossil fuels, and also its ever-increasing rate of consumption;

WHEREAS, as a means of lessening the effect of such shortage of energy there is need of developing an integrated energy policy for the United States and for the various states comprising it;

WHEREAS, to accomplish this for the State of Utah the Governor and the Legislature of Utah during 1976 created a Joint Legislative Committee on Energy Policy, which Committee commenced meeting in June, 1976, to develop an energy policy for the state and submit it to the General Session of the Utah Legislature scheduled to convene on January 10, 1977, and to the Governor of this state;

WHEREAS, this Committee has had a large number of meetings since June, 1976, and has expended great effort in developing an energy policy for the state, putting this in the form of a preliminary energy policy report for consideration by concerned citizens of this state;

WHEREAS, this preliminary energy policy report has been considered in hearings held in many strategic cities over the state to allow for further input by the citizens of the state, all of which has been further considered by the Joint Legislative Committee on Energy Policy in preparing the final draft of their energy policy report;

WHEREAS, the final draft of the energy policy report of this Committee has been submitted to the Utah Legislature and to the Governor and contains the following as the proposed comprehensive energy policy for the State of Utah:

COMPREHENSIVE ENERGY POLICY FOR UTAH

No single factor has been more central to the development of the United States as a world power and to the living standards and aspirations of its citizens than a reliable, adequate and generally available supply of energy in multiple forms and at low prices. The committee recognizes that the state and the nation face serious and impending shortages of energy in the future. Immediate action will be required to promote conservation and development of the nation's energy resources and to promote the wise use of existing energy in order to meet this challenge. Inasmuch as substantial undeveloped energy resources lie within the boundaries of the State of Utah, it is appropriate that the State of Utah adopt energy policies that will be in the best interest of the nation and the citizens of Utah.

Similarly, the committee recognizes the great wealth of scenic and recreational resources situated within the boundaries of the state and the responsibility of the state to preserve these resources, to develop them for the benefit of the people of Utah and to make them available for the use of all people of all generations.

The committee recognizes that the energy needs of the state and nation are inextricably tied to population's demand and economic realities, and that society's attitudes and expectations in this regard are the foundation of our energy policy. The committee also recognizes these attitudes and expectations may change and necessitate a reexamination of this energy policy.

The nation's current increasing dependence upon foreign energy sources and its reliance upon the nation's least abundant energy resources, oil and gas, place the nation in jeopardy from government actions abroad that are not in the best interests of the United States and from potential energy blackouts at home. The state cannot by itself set an energy policy. International events and economic and pricing policies are outside the state's influence; furthermore, it is recognized that cooperation and coordination between federal, state and local governments and industry are essential to achieve orderly energy resource development.

Utah is in the somewhat enviable position of having its electricity produced from coal-fired and hydroelectric plants rather than from oil and gas-fired plants and therefore should be better off than most areas in terms of resource availability. Currently energy prices in Utah compared with the

rest of the nation are low. In the future, as the world price of oil rises and the costs of producing fossil fuels increase, all energy prices will undoubtedly rise in spite of such energy saving measures as conservation and in spite of increased production of in-state resources.

Conservation of energy for economic and availability reasons is of paramount importance and a separate state committee is in the process of formulating a state conservation plan. It is questionable, however, whether conservation alone can reduce the growth in energy demand significantly without basic changes in American lifestyles and standards of living. Therefore, energy development must occur and should be designed to protect the natural and scenic value of the state for future generations.

While development of all Utah's energy resources, both renewable (solar, geothermal and wind) and nonrenewable (oil, gas, coal and synthetic fuels) are viewed as desirable, it is recognized that a major portion of the state's and nation's increased energy demand should be met by increased coal production. This coal development should, where possible, be utilized for in-state electric generation and for the development of a diversified state industrial base; however, exportation of the raw material should also be sought where such exportation brings the greatest net benefits for the welfare of Utah citizens.

In order to encourage development, Utah should aggressively seek out and develop for maximum public benefit its undeveloped water resources so far as may be consistent with environmental values. Water is a scarce resource and the proper development of Utah's in-state water and its interstate water allocations are necessary to provide water for Utah's increasing population as well as for agriculture, industry and energy development.

Energy resource development can result in many benefits for the state, including jobs for Utah's increasing population, increased tax and royalty income and increased economic prosperity for its citizens; however, there can be negative aspects to development, particularly in its initial phases. State and local government must prepare for the impacts of energy development. This means assuring a proper financial base to allow local governments to provide adequate public services for the expected increased population caused by energy development. The state should help local government assess the impacts of proposed development and provide technical and financial assistance to local communities.

Environmental constraints often imposed by the Federal Government impose limits to energy development. Utah's environmental standards should be related to the needs of its citizens while recognizing valid interstate concerns. The state should assume an active role in the administration of environmental requirements. In general, the state should encourage the siting of industrial development in areas which do not conflict with those having special historic, scientific, archeological, natural or scenic significance. It should immediately analyze the feasibility of establishing "energy corridors" in the state.

The State Energy Policy will need to be updated periodically and the implementation of a policy must be coordinated with state agencies. Currently, there is too much fragmentation in development and administration of state energy policy. A standing energy policy committee should be established, composed of selected private citizens and representatives from state agencies having responsibilities related to community affairs and energy development. This committee should coordinate energy programs and develop recommended energy policy for submission to the Governor and Legislature.

ENERGY AND THE ECONOMY OF UTAH

(1) The state should recognize its responsibility to facilitate the availability of energy to meet the needs of its citizens and to assure meaningful jobs for Utah's growing population.

(2) The state should encourage the diversification and dispersion of energy demand by attracting various types of industries and by encouraging the locations of industries in areas outside the Wasatch Front.

(3) Light industry and other secondary industries should be encouraged to locate in Utah to provide a stable in-state market for energy produced within the state, to provide a stable employment base and to make certain the value added by manufacturing occurs (and is taxed) in Utah.

JOB TRAINING AND EDUCATION

(4) The state should make a greater effort to develop and train its residents to meet energy-related jobs and should develop specific plans for meeting employment training goals with particular attention given to under-trained people in the inner cities and depressed rural areas.

(5) The state should seek to phase out those job training programs which are not geared to meet existing and projected job markets.

(6) The state should provide residents in rural Utah with improved access to training facilities and programs that are geared to the area job markets.

WATER

(7) Although the state does not have unlimited water for energy development, a portion of its underutilized and unallocated water, which is sufficient to support substantial energy development, should be used for that purpose.

(8) The state should aggressively develop uses for its interstate compact water allocations to insure availability of this water to the State of Utah.

(9) The state should aggressively seek out and develop for optimum public benefit its undeveloped water resources so far as may be consistent with economic, social and environmental values.

(10) Although Utah has unallocated and underutilized water, the state should encourage energy development and industrial projects that use water efficiently.

TAX AND FISCAL

(11) The State of Utah should devise a tax and fiscal structure related to resource development which provides for the social and physical costs of community problems created by energy development.

(12) Local governments should aggressively and cooperatively explore the existing alternatives available to them to provide the funding for increased services required by energy or other development.

(13) Additional sources of funding to local governments which are impacted by energy development should be provided. Legislative action should insure that these additional funds are available on a timely basis.

(14) Local governments should establish guidelines which will insure that there presently exists, or there is a sufficient plan to provide adequate housing and public intrastructure for the expected increased population caused by large-scale energy or industrial development. State government agencies should be capable of providing technical assistance to help county governments make that determination.

EXPLORATION AND LEASING

(15) State determined goals should be the controlling factor in establishing state exploration and leasing regulations.

(16) The state should formulate a program to identify those state and federal lands having high energy use potential and promote their wise development.

(17) The state should facilitate the development of its mineral lands in an environmentally acceptable manner.

ENVIRONMENTAL PROTECTION

(18) The state should establish environmental standards which uphold the public interest in preserving the natural and scenic values of Utah and which protect the health, safety and general welfare of its citizens.

(19) The state in its development of resources should not endanger the health, safety and general welfare of its citizens or the health, safety and general welfare of citizens in neighboring states through the pollution of air and watersheds.

(20) Any industrial entity or contractor who in the process of its activities adversely affects the environment should be required by law to restore the environment to a reasonably equivalent condition to that existing prior to the activities and should be required to furnish a bond or other method of security to guarantee such action upon completion of its projects.

(21) The state should assume responsibility to administer federal environmental programs whenever permitted by law, and should seek necessary federal legislation to delegate this responsibility and provide necessary funds for administration.

(22) The state should expand its assistance to local governments in meeting culinary water and wastewater system requirements, both of which are strongly impacted by energy and related industrial development.

(23) Incentives should be developed to encourage the siting of industrial development in areas which do not conflict with those having special historical, scientific, archeological, natural or scenic significance.

EXPORTATION

(24) The state policy regarding the exportation of energy should be sufficiently flexible to allow both exportation of energy raw materials and exportation of these raw materials converted to other energy forms with preference given that energy form which brings the greatest net benefit to the welfare of the citizens of Utah.

ENERGY PRICING

(25) Energy prices should be determined by total costs and marketplace conditions.

(26) The state effort to minimize the social problems resulting from energy costs, as in the case of food costs, is the responsibility of the department of social services and not of energy pricing policies.

ENERGY CONSERVATION

(27) Since waste in any form results in wasted energy, the elimination of waste of all kinds, including energy, should be a state goal.

(28) Conservation of energy for economic and availability reasons is of paramount importance. In spite of our best efforts at conservation, it appears that there will still be a substantial increase in energy demand in the foreseeable future.

RESEARCH

(29) The state should further facilitate program development, communication, coordination and use of science and technology by and for all governmental units in the State of Utah through the Council on Science and Technology, created by section 63-45-3, Utah Code Annotated 1953. The Council on Science and Technology performs a legitimate function of state government and should become a permanent part thereof.

ENERGY CONSORTIUM

(30) The state approved the concept of the University of Utah, Brigham Young University and Utah State University as a major energy research vehicle.

ALTERNATIVE ENERGY TECHNOLOGIES—FOSSIL FUELS

(31) The state should emphasize the development of fossil fuels in an environmentally sound manner to supply its own needs and to supplement those of the nation.

COAL

(32) The development of Utah coal should have the highest priority as a means of meeting national energy demands and providing state economic benefits.

OIL AND NATURAL GAS

(33) The state should support the exploration for and development of Utah's oil and gas resources for intrastate markets and for export. The state should encourage expanded application of secondary and tertiary reserve recovery of these resources.

SYNTHETIC FUELS

(34) The state should support and facilitate oil shale development, tar sand development and coal gasification and liquefaction on a demonstration basis.

ALTERNATIVE ENERGY TECHNOLOGIES—RENEWABLE RESOURCES

(35) Innovative energy technologies should be encouraged by the state.

SOLAR ENERGY

(36) Solar energy should not be viewed as an exotic future alternative but as a potential present-day supplement to traditional energy sources which, when used in optimal combination, can make a contribution to the satisfaction of energy demands. The state should support development and use of this resource.

GEOTHERMAL

(37) State and local governmental entities should regard geothermal energy as a potential present-day supplement to traditional energy sources for the heating of entire communities, for electrical generation and for steam for industrial purposes.

WIND

(38) Wind as an energy resource should be considered a supplemental energy source for local projects.

HYDROELECTRIC

(39) Hydro as an energy source should be considered in conjunction with water development projects.

ALTERNATIVE ENERGY TECHNOLOGIES—NUCLEAR

(40) Utah's development of nuclear resources, at present, will be primarily confined to uranium ore mining, processing and waste disposal. The state should assure that such mining, processing and waste disposal is accomplished in a safe manner and will not result in significant adverse health and environmental consequences.

ALTERNATIVE ENERGY TECHNOLOGIES—HYDROGEN

(41) Continued research in the production and uses of marketable hydrogen should be encouraged.

ROLE OF STATE AND LOCAL GOVERNMENT

(42) Cooperation and coordination between federal, state and local governments and industry is essential and must be encouraged to insure adequate planning and financing of energy development and to prevent unnecessary delays.

(43) The state's primary functions should be: (a) to address those issues which have statewide implications, (b) to coordinate actions with federal land management agencies, (c) to work with neighboring states, and (d) to assist local governments, both cities and counties, in assessing needs and financing solutions to area problems. In addressing these issues the state should coordinate its own programs and have a unified energy policy.

(44) Local governments, both cities and counties, have the joint role with State Government in site-specific planning for industrial development, area land use regulation and the provision of community services.

NOW, THEREFORE, BE IT RESOLVED by the General Session of the 42nd Legislature of the State of Utah, the Governor concurring therein, that the comprehensive energy policy set forth above be, and it hereby is, adopted as the energy policy of the State of Utah.

BE IT FURTHER RESOLVED, that the Joint Legislative Committee on Energy Policy and each of its members are highly commended for their diligent efforts in preparing and processing the foregoing energy policy report and thereby submitting to the Legislature and the Governor the energy policy hereby adopted.

Approved March 22, 1977.